

THE ONTARIO HUMAN RIGHTS CODE, 1961-62, AS AMENDED

IN THE MATTER OF a complaint by Miss Nora Gordon, that because of her race and colour she was denied occupancy of living accommodations in the building at 527 Windermere Avenue, in the City of Toronto, by Mrs. Bessie Papadopoulos, owner, Toronto, Ontario.

Board of Inquiry

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Dean R. St. J. Macdonald

Appearances:

E. Marshall Pollock, Esq.,
Counsel for The Ontario Human Rights Commission.

Mrs. Bessie Papadopoulos, respondent, appeared without counsel.

To The Ontario Human Rights Commission and to the Honourable Dalton Bales, Minister of Labour for the Province of Ontario:

Gentlemen:

Pursuant to my appointment by the Minister of Labour on the 8th day of December, 1967, as a Board of Inquiry under the Human Rights Code of the Province of Ontario, to inquire into the above-mentioned matter, I arranged for a hearing to be held on Friday, the 9th day of February, 1968, at Committee Room No. 1 in the Main Building, Queen's Park, in the city of Toronto.

I. FACTS

It will be useful to review the facts giving rise to the complaint in respect of which the hearing was held, and as I find them to be.

The complainant is Miss Nora Gordon, a Negro lady from Jamaica, who has been working in Toronto as a business machine operator since 1965. The respondent is Mrs. Bessie Papadopoulos, owner of premises at 527 Windermere Avenue.

About 9 a.m. on July 14th, 1967, Miss Gordon noticed a sign in the window of 527 Windermere Avenue advertising a flat for rent. Miss Gordon inquired and was invited into the premises by Mrs. Papadopoulos, who showed her a two-bedroom apartment on the second floor. Miss Gordon indicated that she was seeking accommodation for herself and her girl-friend, and that in September the girl-friend would be getting married and that the husband would also share the premises. Mrs. Papadopoulos stated that the rent was \$125.00 per month. Miss Gordon said that she would take the apartment and offered to pay a deposit. Mrs. Papadopoulos did not accept the deposit but asked Miss Gordon to return at 11 a.m. when her husband, who was working shifts in a restaurant, would be awake.

Miss Gordon returned to the premises at 11 a.m. The rental sign was in the window but Mrs. Papadopoulos informed Miss Gordon that she had received a message from Greece indicating that her sister, her brother-in-law and their child would be arriving from Greece and that they would take the apartment, which was no longer available. The message from Greece had reached Mrs. Papadopoulos some time before July 14th. Miss Gordon left the premises and on the same day she lodged a complaint with the Ontario Human Rights Commission, stating that she may have been discriminated against by being denied the opportunity to rent an apartment because of her race and colour.

At about 5:30 p.m. on July 14th, the day of the complaint, Mr. Arni S. Arnason, an officer with the Ontario Human Rights Commission, verified the address of the house in question -- 527 Windermere Avenue -- and observed that the rental sign was in the window.

On July 19th, Mr. Arnason returned to 527 Windermere Avenue. The rental sign was in the window. He asked Mrs. Papasopoulos if the apartment was for rent. She stated that it was. Mr. Arnason tried to explain to her that the purpose of his visit was not to rent the apartment but to investigate a complaint that had been made under the Ontario Human Rights Code. Mrs. Papadopoulos, who has little English, did not fully understand. She was under the impression that Mr. Arnason wanted to rent the apartment and with that in mind she kept inviting him to come in to see it. Mr. Arnason indicated that he would return with an interpreter. He left his office card with Mrs. Papadopoulos. Later in the day this card was seen by one Spiros Kapouzas, an electrician who was doing some electrical work at the Papadopoulos' home. Mr. Kapouzas phoned Mr. Arnason and the latter explained the purpose of his visit and the nature of the complaint. Mr. Kapouzos then explained the situation to Mrs. Papadopoulos, in Greek.

On July 27th, Mr. Arnason went to the premises with an interpreter. The complaint was read to Mr. Papadopoulos in Greek. Mr. Papadopoulos denied that there had been discrimination. He stated that the apartment had been rented to a Yugoslav a week earlier, namely, on July 20th, but he was unable to tell Mr. Arnason the name, address or telephone number of the tenant. According to Mr. Papadopoulos, the Yugoslav had visited the premises on three or four occasions since early July, the last time being July 20th. Mr. Arnason asked Mr. Papadopoulos why the rental sign, which was in the window, was still there, since the apartment had been rented. Mr. Papadopoulos offered no explanation, though he insisted that the apartment was rented.

On August 1st, Mr. Arnason and an interpreter met with Mrs. Papadopoulos at 527 Windermere Avenue in order to review the nature of the investigation and the Commission's role therein. Mr. Arnason asked Mrs. Papadopoulos to provide what information she could about the events of July 14th. Mrs. Papadopoulos stated that she thought she had seen an engagement ring on Miss Gordon's finger and that she assumed therefore that Miss Gordon was getting married. She acknowledged that Miss Gordon had said that she would be coming there to live with a friend. Mrs. Papadopoulos then stated that she had known about the Yugoslav man being interested in the apartment and that she was not sure what arrangements he might have made with her husband. She said that when her husband woke up he told her that he had rented the apartment to the Yugoslav. The latter, however, had never taken possession because, according to Mrs. Papadopoulos, his wife had broken her leg. On August 1st, the rental sign was not in the window; no one was in the apartment; and Mrs. Papadopoulos informed Mr. Arnason that a Greek family would be taking the premises on the first of September next.

Between August and October 1967, the Commission attempted to conciliate the matter. The Papadopoulos were sent a registered letter inviting them to attend a special meeting to review the situation. They did not respond directly, but they had a friend phone the Commission on their behalf and inform the Commission that they would not be able to attend the conciliation meeting because they were both working, one during the day and one during the evening.

Prior to the hearing, Mrs. Papadopoulos was advised to consider the desirability of engaging counsel, in the event that the complaint was not conciliated. This advice was not accepted and she and her husband appeared unrepresented by counsel.

Appearing on her own behalf, Mrs. Papadopoulos stated that the apartment had been rented a week or two after July 14th, to a man from Israel described only as Andy. She altered her statement to say that the apartment had first been rented to the Yugoslav, that is to say, from July 14th to July 17th, and that Andy, who had taken possession on or about July 17th, had stayed on the premises for a period of five or six months. According to this statement, Andy was in possession on July 19th, the day on which Mr. Arnason had called at 527 Windermere Avenue, and on that day, according to Mrs. Papadopoulos, the sign was no longer in the window. Mrs. Papadopoulos further stated that when she saw Mr. Arnason on August 1st she told him that the apartment was rented to Andy.

At the request of the Commission's counsel and in view of what he referred to as internal contradictions in Mrs. Papadopoulos' statement, the Board recessed the hearing for ten minutes in order to give Mrs. Papadopoulos a little time to review her evidence. When the hearing was resumed she stated that she had nothing further to say. Mr. Papadopoulos indicated that he did not wish to give evidence.

Finally, there is the evidence of Mr. John Stavropoulos, the real estate agent who sold 527 Windermere Avenue to the Papadopoulos. Mr. Stavropoulos made a statement

on their behalf. He said that in his opinion Mrs. Papadopoulos had formed the impression on July 14th that Miss Gordon or her girlfriend would be bringing their boyfriends in and out of the premises, and that that was what Mrs. Papadopoulos did not like about the situation.

II. CONCLUSIONS

The Board is entitled to act upon a preponderance of credible evidence in an inquiry of this nature, which is for the purpose of making recommendations and is not a criminal proceeding. Taking the evidence as a whole, and having had the opportunity of observing the witnesses carefully, and having proceeded with special caution because of the fact that the respondent (at her own wish) was unrepresented by counsel, the Board is of the opinion that Mrs. Papadopoulos' statement is contradictory and that it conflicts with the evidence given by and on behalf of the complainant. The inconsistencies in the evidence of the respondent lend credence to the evidence of the complainant.

While there may very well have been several reasons for refusing the complainant accommodation at 527 Windermere Avenue, such as, for example, the expectation that relatives, coming from abroad, would require the accommodation available, or the fear that the complainant would bring undesirable persons onto the premises, the respondent's evidence was so fragmentary, inconsistent and contradictory as to be largely valueless for purposes of establishing any such possibilities. The Board has thus reached the conclusion that the

complainant's colour was the principle reason for denying accommodation. No evidence offered by or on behalf of the respondent was sufficient to prevent acceptance /and of this obvious necessary inference.

Having found that the respondent violated the policy set forth in section 3 of the Ontario Human Rights Code as amended by Statutes of Ontario, 1967, Chapter 66, the question arises as to the nature of the recommendation which the Board is to make. In view of the fact that the general purpose of the Code -- the creation of a climate of understanding and mutual respect among all races, creeds and national groups in this province -- is to be achieved mainly, though not exclusively, through education, persuasion, and conciliation, it follows that the usual statement of apology to the complainant, a letter to the Commission expressing willingness to comply with the provisions of the Code, through servants and agents, as well as personally, an offer of accommodation to the complainant, and an undertaking to post Commission cards or posters on the premises, would have been an adequate response from the respondent and a suitable sanction for present purposes. This kind of response, sought on a number of occasions prior to the hearing, was not (unfortunately) forthcoming.

The Board is therefore of the opinion that, in addition to seeking the sort of response referred to above, the Commission must also give consideration to proceeding by way of prosecution and fine. That the Commission enjoys the capacity to involve itself in such prosecution would appear to stem from its "power to administer this Act" under section 8, as well as by intendment from the general objects which the legislation

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seeks to achieve. The Code from the outset was intended to be something more than a mere declaration of desirable values enforceable solely through the processes of education and persuasion. While the Code may not represent criminal law strictly considered, enforceable by the imposition of heavy penalties, it nevertheless reflects governmental belief that "artificial barriers denying equality of opportunity . . . can be breached and torn down" (Debates of the Legislature of Ontario, December 14, 1961, at p. 419) and for this purpose it provides its own quasi-criminal sanctions, namely, prosecution and fine. It goes without saying that these latter sanctions, when deemed appropriate, should follow rather than precede efforts at educative persuasion and conciliation. Resort should only be had to the more stringent techniques of inducing compliance when traditional efforts at settlement through discussion and persuasion have proved to be ineffective for purposes of providing an adequate remedy for the complainant, deterring others from discriminating in the manner sought to be interdicted, or maintaining and strengthening the integrity of the legislation and the policy which it embodies.

It needs to be remembered that under the system that is presently in force in this province the person who believes that he has been discriminated against can personally take little if any effective legal action against the alleged discriminator. He must rely upon the Commission's intervention, which means, in effect, that he cannot enforce his human rights under the Code with the same freedom with which he can enforce his civil rights under the common and statutory laws generally considered.

The Commission is thus in a sense the repository of the citizen's trust and it is up to the Commission to do everything that it can do, within the framework of reasonableness and effectiveness, to vindicate the rights of the citizen and to fortify the citizen's confidence in the practical meaning and value of the rights which the Code confers upon him. The Code moreover contains no provision for the awarding of civil damages to the person discriminated against. These two features of the enforcement process suggest that the adequacy of the remedy for the particular complainant should not and cannot be ignored, especially when, as in this case, the humiliation and emotional distress occasioned by the abrupt confrontation with discrimination appears to have been considerable.

In addition to its responsibility for vindicating the rights of the individual complainant, the Commission has an important institutional duty to bolster respect for the principle of equality, to reaffirm expressly and powerfully that this principle has a community status superior to that of a pious slogan, and to publicize the fact that uncompromising condemnation of racial discrimination is a part of the public morality of the province. This duty is most effectively discharged by the Commission's adoption from time to time of a posture of vigorous enforcement. Such a posture is invited, moreover, in situations where, as here, the respondent has shunned conciliation, refused the assistance of counsel, and exhibited an attitude of casualness and disinterest in most of the Board's proceedings. While it is undoubtedly true that a settlement - oriented approach to the enforcement of

The Commission on the part of the Government of the United States, in the year 1892, was organized by the President, and its members were the Hon. John D. Long, Secretary of the Interior, and the Hon. John W. Foster, Secretary of the Navy. The Commission was charged with the duty of investigating the conditions of the Indian population in the United States, and of recommending such measures as might be necessary for their improvement. The Commission held its first meeting on the 1st of March, 1892, and continued its sessions until the 1st of May, 1892. During this period, the Commission held numerous public hearings, and received many suggestions from the Indian population. The Commission also conducted extensive research into the conditions of the Indian population, and its findings were set forth in a report which was submitted to the President on the 1st of May, 1892. The report of the Commission was a comprehensive and valuable contribution to the knowledge of the Indian population in the United States, and it has served as a basis for many of the policies which have been adopted by the Government in dealing with the Indian population. The Commission's report was published in the year 1892, and it has since been reprinted many times. It is a valuable work, and it is one which should be read by all who are interested in the Indian population in the United States.

anti-discrimination legislation tends to produce the best results (see the comment in 15 University of Toronto Law Journal 448), there is general agreement that this approach must be supported and made credible, in appropriate cases, by resort to prosecution.

All of which is respectfully submitted.

(signed)

D. J. Muehle

Board of Inquiry

Dated at Toronto, Ontario, this
31st day of May 1968.

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